

United States  
Circuit Court of Appeals

For the Ninth Circuit. / 2

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THE SEA INSURANCE COMPANY, LTD.,  
EAGLE STAR INSURANCE COMPANY,  
LTD., and THE TOKIO MARINE and FIRE  
INSURANCE COMPANY, LIMITED,  
Appellants,

vs.

AMERICAN-HAWAIIAN STEAMSHIP COM-  
PANY, Owner of Steamship "ARKANSAN",  
etc.,

Appellee.

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Apostles on Appeal

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Upon Appeal from the District Court of the United  
States for the Southern District of California,  
Central Division.

FILED

JUL 19 1939

PAUL P. O'BRIEN,  
CLERK



**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

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vs.

AMERICAN-HAWAIIAN STEAMSHIP COM-  
PANY, Owner of Steamship "ARKANSAN",  
etc.,

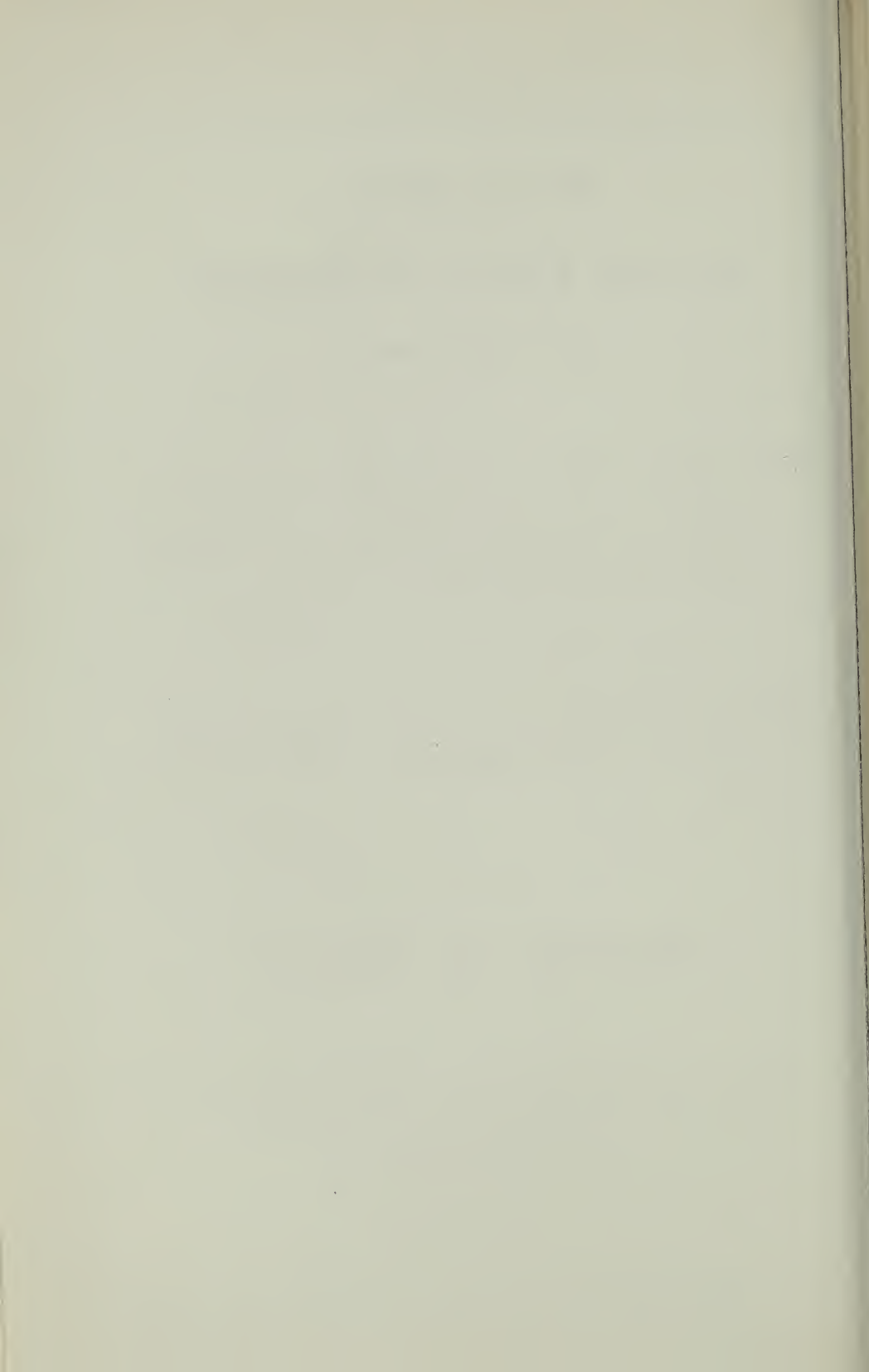
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Upon Appeal from the District Court of the United  
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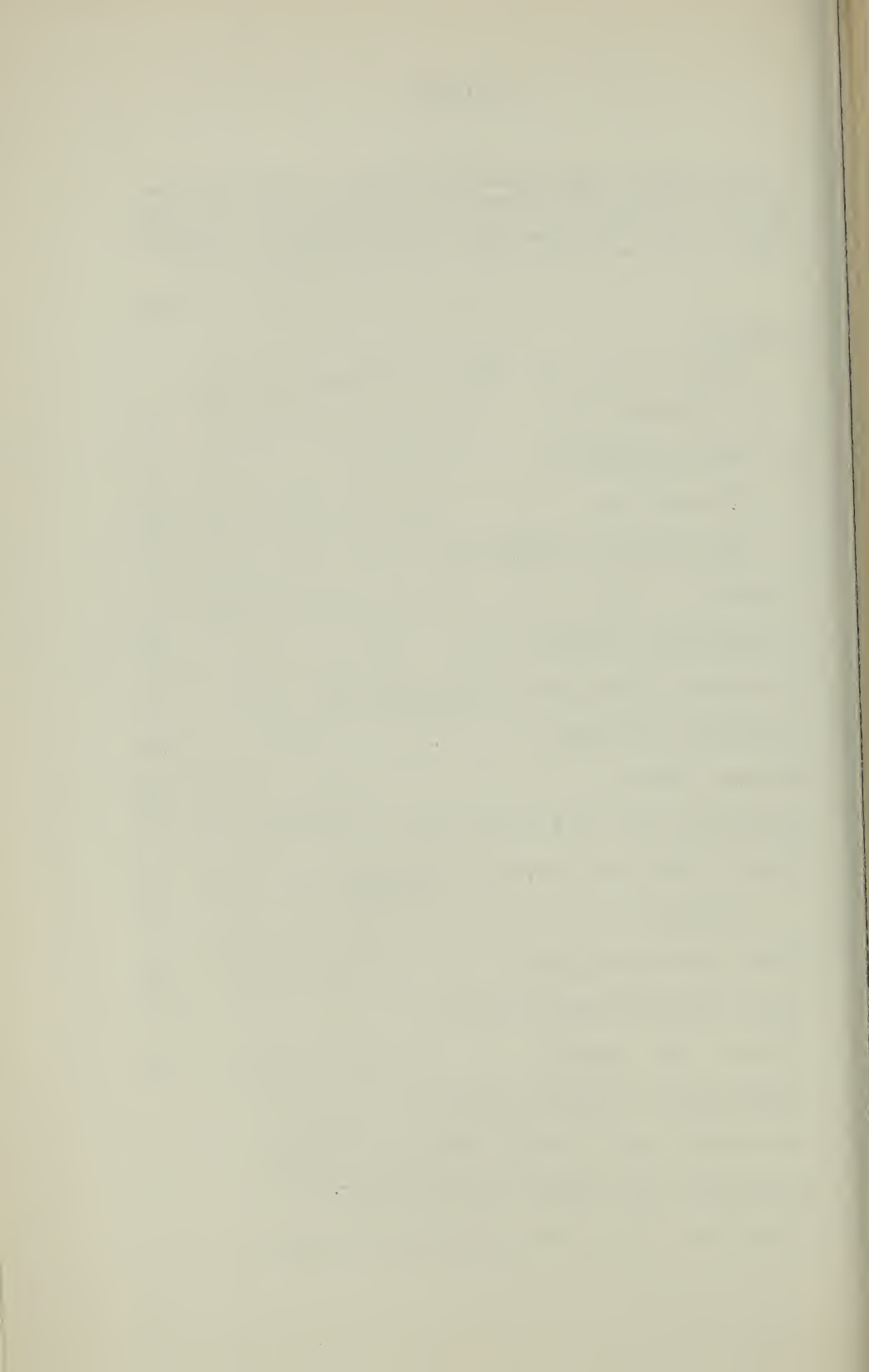
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF PROCTORS

For Appellants:

YOUNG & KELLY,  
E. R. YOUNG, Esq.,  
H. R. KELLY, Esq.,  
FRANK R. JOHNSTON, Esq.,  
Banks Huntley Building,  
634 South Spring Street,  
Los Angeles, California.

BIGHAM, ENGLAR, JONES & HOUSTON,  
99 John Street,  
New York, N. Y.

For Appellee:

DORR & STEVENSON,  
FREDERICK W. DORR, Esq.,  
ARCHIE M. STEVENSON, Esq.,  
1505 Merchants Exchange Bldg.,  
465 California Street,  
San Francisco, California. [1\*]

In the District Court of the United States, Southern  
District of California, Central Division.

No. 8434-C—In Admiralty

THE SEA INSURANCE COMPANY, LTD.,  
EAGLE STAR INSURANCE COMPANY,  
LTD. and THE TOKIO MARINE AND FIRE  
INSURANCE COMPANY, LIMITED,  
Libellants,

The Steamship "ARKANSAN", her engines,  
boilers, etc.

AMERICAN-HAWAIIAN STEAMSHIP COM-  
PANY,

Claimant.

**LIBEL IN REM FOR COLLISION DAMAGE**

To the Honorable The Judges of the United States  
District Court for the Southern District of  
California:

The libel of The Sea Insurance Company, Ltd.,  
Eagle Star Insurance Company, Ltd. and The Tokio  
Marine and Fire Insurance Company, Ltd., as in-  
surers of cargo laden on board the steamship  
"Knoxville City", against the Steamship "Ar-  
kansan", her engines, boilers, etc., in a cause of  
collision, civil and maritime, upon information and  
belief allege:

I.

Libellants, The Sea Insurance Company, Ltd. and  
Eagle Star Insurance Company, Ltd. are corpora-



tions organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Northern Ireland and having general agents in New York City, New York. [5]

II.

Libellant, The Tokio Marine and Fire Insurance Company, Limited, is a corporation organized and existing under and by virtue of the laws of the Empire of Japan and having a general agent in New York City, New York.

III.

At all times hereinafter mentioned, libellants were insurers of various shipments of general cargo laden on the steamship "Knoxville City".

IV.

The steamship "Arkansan" is now, or during the pendency of process herein will be, within this district and within the jurisdiction of this Honorable Court.

V.

Shortly before 5 A. M. on the morning of September 19, 1937, the steamship "Knoxville City" left her anchorage in the harbor of San Pedro, California and headed for the opening between the ends of the breakwaters on her way out to sea. The side lights, range lights and masthead light of the "Knoxville City" were lit and burning brightly. It was just about daybreak, but visibility was good. While the "Knoxville City" was still inside of the

harbor and heading for the entrance between the ends of the breakwaters, a one blast whistle was sounded by a steamship, which later proved to be the "Arkansan". At that time the "Arkansan" was off the starboard bow of the "Knoxville City". The "Arkansan" was outside of the breakwaters and apparently heading on a course which would take her between the ends of the breakwaters. The "Knoxville City" immediately answered the one-blast signal of the "Arkansan" with a similar one-blast signal and put her rudder hard right in order that both vessels might pass each other safely port to port, in accordance with the one blast whistle signals [6] exchanged by both vessels. The "Arkansan", however, failed to change her course to starboard or to check her headway as she approached, but, on the contrary, swung somewhat to port. The engines of the "Knoxville City" were thereupon stopped and backed and a signal of three blasts were sounded. The "Arkansan" continued ahead without apparently checking her course or speed. A danger signal was thereupon sounded by the "Knoxville City", but, as the "Arkansan" still made no apparent effort to avoid collision, the rudder of the "Knoxville City" was put over hard left and her engines put full speed ahead in order that both vessels might strike each other broadside and thus minimize the force and effects of the collision, which was then inevitable. The "Arkansan" still continued on, however, without checking her headway or taking any steps to keep clear of the "Knoxville City", with the result that her port side, in the

vicinity of No. 1 hatch, struck the bow of the "Knoxville City" twisting the stem of that vessel to port and causing considerable damage to her. After the collision the engines of the "Knoxville City" were reversed and she proceeded to an anchorage.

## VI.

The aforesaid collision and consequent damage were not caused or contributed to by any fault or neglect on the part of libellants or any of the owners and/or insurers of cargo on the steamship "Knoxville City" or on the part of those for whom libellants and the owners or insurers of said cargo are responsible, but were caused by reason of fault, neglect and want of care on the part of the steamship "Arkansan" and those in charge of that vessel in the following among other respects, which will be pointed out at the trial of this action: [7]

1. In that those in charge of said steamship were incompetent and inattentive to their duties.

2. In that those in charge of said steamship failed to maintain an efficient and proper lookout.

3. In that said steamship proceeded at an excessive rate of speed under the existing conditions.

4. In that those in charge of said steamship failed to sound a signal when the "Knoxville City" was first observed.

5. In that those in charge of said steamship failed to check their headway after sounding a one blast signal and receiving an answering one blast signal from the "Knoxville City".

6. In that those in charge of said steamship having agreed to a port to port passing with the "Knoxville City" failed to take any proper or adequate steps to effect such a passing.

7. In that those in charge of said steamship having agreed to a port to port passing with the "Knoxville City" failed to direct their course sufficiently to starboard to effect such a passing.

8. In that said steamship failed to keep as closely as possible to the red buoy marking the western end of the eastern breakwater as she passed through the breakwaters.

9. In that said steamship swung to port instead of swinging to starboard as she approached the "Knoxville City".

10. In that those in charge of said steamship failed to sound a danger signal when a situation of danger was or should have been apparent.

11. In that those in charge of said steamship failed to reverse their engines in time to avoid collision. [8]

## VII.

By reason of the aforesaid collision, general average expenses were incurred by the master, owner and/or agents of the steamship "Knoxville City" for and on behalf of the owner of that vessel and on behalf of the owners of the cargo laden thereon. Libellant, The Tokio Marine and Fire Insurance Company, Limited, as insurer of some of the said cargo owners, paid the proper proportion of the said cargo owners of such expenditures and of the



expenses of declaring the general average incurred and paid on behalf of said cargo owners and thereby became subrogated to the rights of the said cargo owners arising by reason of the said payments. Libellants, The Sea Insurance Company, Ltd. and Eagle Star Insurance Company, Ltd., have been required to furnish security for the payment of cargo's proper proportion of such general average expenses and sacrifices and the expenses of adjusting the same and to make payment of the same when adjusted.

#### VIII.

By reason of the premises, libellants have sustained damage in the sum of Twenty-seven Thousand and 00/100 (\$27,000.00) Dollars, as nearly as the same can now be estimated, no part of which has been paid, although payment has been duly demanded.

#### IX.

All and singular the premises are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellants pray that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and Maritime jurisdiction, issue against the said steamship "Arkansan", her engines, boilers, etc., and that all persons having or claiming any [9] interest therein be cited to appear and answer all and singular the matters aforesaid; that this Honorable Court be pleased to decree to your libellants their damages,

with interest and costs, and that the steamship "Arkansan", her engines, etc., be condemned and sold to satisfy the same; and that your libellants may have such other and further relief as in law and justice they may be entitled to receive.

YOUNG & KELLY,

Banks Huntley Building,

634 South Spring Street,

Los Angeles, California.

BIGHAM, ENGLAR, JONES &  
HOUSTON,

99 John Street,

New York, N. Y.

(Protectors for  
Libellants). [10]

State and Southern

District of California,

County of Los Angeles—ss.

Frank R. Johnston, being first duly sworn, deposes and says:

That he is an attorney at law and proctor in admiralty, associated with Messrs. Young and Kelly, Proctors for Libellants herein; that he has read the foregoing libel and that the same is true to the best of his knowledge, information and belief; that he makes this verification for the reason that libellants have no officers within the County of Los Angeles or the Southern District of California; that the sources of his knowledge and information are inter-

views had with various witnesses and records and reports which he has examined.

FRANK R. JOHNSTON.

Subscribed and sworn to before me this 13th day of July, 1938.

[Seal] E. L. SEARLE,

Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: Filed Jul. 13, 1938. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

[11]

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[Title of District Court and Cause.]

ANSWER TO LIBEL

To the Honorable, the Judges of the United States  
District Court for the Southern District of  
California, Central Division:

The answer of American-Hawaiian Steamship Company, a corporation, claimant of the steamship "Arkansan" in the above entitled cause, to the libel of The Sea Insurance Company, Ltd., Eagle Star Insurance Company, Ltd., and The Tokio Marine and Fire Insurance Company, Limited, against said steamship "Arkansan", her engines, boilers, etc., respondent, denies, admits, and alleges as follows:

I.

Claimant alleges that it has neither information nor belief sufficient to enable it to admit or deny the

allegations in paragraphs I, II and III of said libel, wherefore it denies said allegations, all and singular, for want of such information or belief, and calls for strict proof thereof, if material. [12]

## II.

Claimant admits the allegations of paragraph IV of said libel.

## III.

Answering unto the allegations of paragraph V of said libel, claimant denies that portion of said paragraph V on lines 25 and 26 of page 2 thereof, reading as follows: "At that time the 'Arkansan' was off the starboard bow of the 'Knoxville City,'" and that portion of said paragraph V commencing at line 28 on page 2 with the words, "The 'Knoxville City' " and ending with the words "to an anchorage", on line 20 of page 3 of said paragraph V. Claimant admits the remaining allegations of said paragraph V.

## IV.

Claimant denies, all and singular, the allegations in paragraph VI of said libel.

## V.

Answering unto the allegations of paragraph VII of said libel, claimant alleges that it has neither information nor belief sufficient to enable it to answer said allegations, or any of them, wherefore it denies said allegations, all and singular, for want of such information or belief, and calls for strict proof thereof, if material.



VI.

Answering unto the allegations of paragraph VIII of said libel, claimant denies that libellants have sustained damages in the sum of twenty-seven thousand dollars (\$27,000.00), or in any other sum, by reason of the premises, or any of them, set forth in said libel, but admits that no part of said sum has been paid. Claimant denies that payment has been duly demanded. [13]

VII.

Answering unto the allegations of paragraph IX of said libel, claimant denies that all and/or singular the premises are true, but admits that they are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

\* \* \* \* \*

Further answering said libel, and by way of an affirmative defense thereto, claimant American-Hawaiian Steamship Company, a corporation, alleges as follows:

I.

That American-Hawaiian Steamship Company, a corporation, claimant herein, was at all the times herein mentioned, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and was at all said times, and now is, the owner of the American steamship "Arkansan", of 7,030 gross tons burden, or thereabouts.

## II.

That claimant has been informed and believes, and therefore alleges upon such information and belief, that Isthmian Steamship Company, a corporation, was at all the times herein mentioned, and now is, a corporation, and was at all said times, and now is, the owner of the American steamship "Knoxville City", a steel vessel of 5,686 gross tons burden, or thereabouts, and of her engines, boilers, boats, tackle, apparel, furniture and appurtenances; that said vessel at the commencement of this action was lying in the harbor of Los Angeles, or waters tributary thereto, in the Southern District of California and within the jurisdiction of this Honorable Court. [14]

## III.

That on the 19th day of September, 1937, while said steamship "Arkansan" was bound on a voyage from the port of San Francisco and other Pacific Coast ports to ports on the Atlantic Coast of the United States via the Panama Canal, said steamship "Arkansan" and said steamship "Knoxville City" came into collision at about 5:13 o'clock A. M. on said 19th day of September, 1937, at a point a short distance inside the entrance to Los Angeles outer harbor and near the red buoy off the westerly end of the east breakwater; that as a result of said collision the steamship "Arkansan" was badly damaged and was obliged to enter the port of Long Beach.

## IV.

That shortly before said collision the steamship "Arkansan" was proceeding slowly toward the entrance to the outer harbor of Los Angeles, between the east and west breakwaters, and keeping well to the easterly side of said entrance, which lay on the starboard hand of said vessel; that the day was breaking, the weather was clear, the visibility was good, and it was possible to distinguish objects clearly at a distance of several miles. That the "Arkansan", while approaching said entrance, sighted off her port bow the lights of a vessel at least one mile distant, which vessel later turned out to be the "Knoxville City"; that the said vessel appeared to be moving inside the breakwater on a course toward the entrance to the outer harbor, which would cross the course of the "Arkansan" from port to starboard; that on sighting said lights and said vessel a one-blast whistle signal was sounded by the "Arkansan", which signal was immediately answered by a similar one-blast signal from the other vessel, after which the steamship "Arkansan" proceeded slowly on her course, keeping well to the starboard side of said entrance; that shortly thereafter a [15] one-blast whistle signal was sounded by the "Knoxville City", which signal was immediately answered by a one-blast signal from the "Arkansan"; that thereafter the "Knoxville City" did not appear to change her course, but continued to approach the "Arkansan" on a course which was approximately at right angles to the

course of the "Arkansan" and off her port bow; that when it was noted by those in charge of the navigation of the "Arkansan" that the "Knoxville City" apparently was not changing course and taking steps to avoid the "Arkansan", the engines of the latter vessel, which in the meantime had been stopped, were put at full speed astern, in an attempt to avoid a collision, which appeared to be imminent. At the same time the rudder of the "Arkansan" was put at "hard right". The "Knoxville City", however, continued to approach without reducing speed, changing course, or taking any steps to avoid the collision, and her stem struck the "Arkansan" on the port bow, abreast of the No. 1 hatch, cutting through the side of the vessel and causing considerable damage to the vessel and cargo.

#### V.

That at the time of said collision and at all times prior thereto the steamship "Arkansan" was proceeding at a moderate rate of speed, having careful regard to the existing circumstances and conditions, was keeping a sharp lookout, and in all respects complying with the laws and rules of navigation; that said vessel was at all said times navigated with due caution and skill by the master and officers thereof, and that said collision was not caused by any fault, negligence, or want of due care on the part of said claimant, or of said steamship "Arkansan", or of the master, officers, or crew of said vessel, or any of them.



VI.

That claimant is informed and believes that the said [16] collision and the consequent damages to said steamship "Arkansan" and to the cargo on board said vessel were entirely due to the fault of said steamship "Knoxville City" and of those in charge of the navigation of said vessel, and, upon such information and belief, claimant alleges that said vessel was at fault in the following, among other, particulars:

First: That said steamship "Knoxville City" at and prior to the time of said collision did not have on watch proper or competent officers attending to their duties.

Second: That said vessel at and prior to the time of said collision did not have a proper, competent, or any lookout on duty.

Third: That said vessel at and prior to the time of said collision failed to go at a moderate speed, having careful regard to the existing circumstances and conditions.

Fourth: That said vessel was improperly navigated in that said vessel approached the entrance to the outer harbor of Los Angeles from a point or location where the view of any vessels approaching said entrance from the outside was obstructed or obscured, and notwithstanding said fact said "Knoxville City" approached said entrance at full speed and without proceeding cautiously and keeping a proper and careful lookout.

Fifth: That said vessel was under registry and failed and neglected at and prior to the time of said collision to take and have on board in charge of the navigation of said vessel a duly licensed pilot for said waters.

Sixth: That prior to said collision and at all times while said "Knoxville City" was approaching said "Arkansan" and while the two vessels were in sight of each other, the said "Knoxville City" was on the port hand of the "Arkansan" and was approaching the latter vessel on a crossing course; that notwithstanding that the Rules for Preventing Collisions, which [17] were applicable to the situation at the time, required the "Knoxville City" to keep clear of the "Arkansan", the "Knoxville City" failed and neglected to keep clear, but continued on her course without reducing speed until the point of collision.

Seventh: That the steamship "Knoxville City" failed and neglected to keep to the part of the channel or entrance to the Los Angeles outer harbor between the east and west breakwaters which lay on her starboard or right-hand side, but, on the contrary, proceeded across said entrance to the side which lay on the starboard or right-hand side of the "Arkansan", where said collision occurred.

Eighth: That said steamship "Knoxville City" was negligent in other and further particulars of which claimant is not at present advised, and when so advised it will beg leave to offer proof of said

negligent acts and to amend its answer to conform with such facts.

VII.

That as a result of said collision and the damages to the steamship "Arkansan" and to the cargo on board said vessel resulting therefrom, including general average, and by reason of the delay of said vessel, claimant, as owner of said vessel and as bailee of said cargo laden on board thereof, has sustained damage in an amount which cannot be ascertained at present, but which is estimated at the sum of two hundred thousand dollars (\$200,000.00), no part of which has been paid.

Wherefore, claimant prays that libelants The Sea Insurance Company, Ltd., Eagle Star Insurance Company, Ltd., and The Tokio Marine and Fire Insurance Company, Limited, may take nothing by their libel herein, that the same may be dismissed, with costs to claimant, and that claimant may have such other and further relief in the premises as in law and justice it may be [18] entitled to receive.

HENGSTLER, DORR &  
STEVENSON,  
OVERTON, LYMAN & PLUMB,  
Proctors for Claimant,  
American-Hawaiian Steam-  
ship Company. [19]

State of California,  
City and County of San Francisco—ss.

W. J. Mahoney, being first duly sworn, deposes and says:

That he is an officer, to-wit, the Treasurer, of American-Hawaiian Steamship Company, a corporation, the claimant in the above entitled action, and makes this verification for and on behalf of said claimant; that he has read the foregoing answer to libel and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to such matters that he believes it to be true.

W. J. MAHONEY.

Subscribed and sworn to before me (this 15th day of November, 1938.

[Seal] EDITH GOEWEY,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires November 22, 1940.

Due service and receipt of a copy of the within Answer to Libel is hereby admitted this 16th day of November, 1938.

YOUNG & KELLY,  
BIGHAM, ENGLAR, JONES &  
HOUSTON,

Proctors for Libellants.

[Endorsed]: Filed Nov. 17, 1938. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk. [20]



[Title of District Court and Cause—In Admiralty  
Nos. 8141-Y, 8143-M, 8147-Y, 8434-C.]

STIPULATION FOR CONSOLIDATION OF  
CASES AND TRIAL.

It Is Hereby Stipulated and Agreed, by and between the parties to the above entitled cases, through their respective counsel, that all said cases arise out of the same matter, that is, a collision between the S. S. "Arkansan" and the S. S. "Knoxville City".

It Is Further Stipulated and Agreed, that the above case, "The Sea Insurance Company, Ltd., Eagle Star Insurance Company, [22] Ltd., and The Tokio Marine and Fire Insurance Company, Limited, Libelants, vs. The Steamship 'Arkansan', her engines, boilers, etc. American-Hawaiian Steamship Company, Claimaint," In Admiralty No. 8434-C, may be consolidated with the cases of "American-Hawaiian Steamship Company, a corporation, Libelant, vs. The Steamship 'Knoxville City', her engines, boilers, boats, tackle, apparel, furniture and appurtenances, and Isthmian Steamship Company, a corporation, Respondents, Isthmian Steamship Company, a corporation, Claimant," In Admiralty No. 8141-Y; "Aiken Country Stores, et al, Libelants, vs. The Steamship 'Knoxville City', her engines, tackle, boilers, boats, apparel, furniture and appurtenances, and Isthmian Steamship Company, a corporation, Respondents, Isthmian Steamship Company, a corporation, Claimant", In Admiralty No. 8143-M; "Isthmian Steamship Company, a cor-

poration, Libelant, vs. The Steamship 'Arkansan', her engines, boats, boilers, tackle, apparel and furniture, and American-Hawaiian Steamship Company, a corporation, Respondents, American-Hawaiian Steamship Company, a corporation, Claimant'', In Admiralty No. 8147-Y, which cases have heretofore been consolidated, and that all of said cases may be tried before the Honorable Leon Yankwich, Judge of the United States District Court on the 22nd day of November, 1938, without further notice.

It Is Further Stipulated and Agreed, that there shall be determined at the trial only the question of liability for the collision and for the damage caused thereby, and that all parties hereto shall thereafter prove their damages by a reference to a Commissioner or by further court hearings as the court may order.

Dated: Los Angeles, California, November 19th, 1938. [23]

HENGSTLER, DORR &  
STEVENSON

OVERTON, LYMAN & PLUMB  
Proctors for S. S. "Arkan-  
san" and American-  
Hawaiian Steamship Com-  
pany.

McCUTCHEN, OLNEY,  
MANNON & GREENE

By HAROLD BLACK  
WALTER SHELTON

Proctors for S. S. "Knoxville  
City" and Isthmian Steam-  
ship Company.

LILLICK, McHOSE & ADAMS

JOHN C. McHOSE

JAMES L. ADAMS

Proctors for Aiken Country  
Stores, et al, cargo on the  
"Arkansan".

BIGHAM, ENGLAR, JONES &  
HOUSTON

YOUNG AND KELLY

H. R. KELLY and

FRANK R. JOHNSTON

Proctors for The Sea Insur-  
ance Company, Ltd., et al.

It is so ordered:

LEON YANKWICH

United States District Judge.

[Endorsed]: Filed Nov. 21, 1938. R. S. Zimmer-  
man, Clerk. By L. B. Figg, Deputy Clerk. [24]

[Title of District Court and Cause.—In Admiralty  
No. 8434-C.]

### STIPULATION AND BOND.

Know All Men by These Presents, That:

Whereas, the above named libelants have filed in the above entitled court a libel upon a certain claim in the total amount of Twenty-seven Thousand Dollars (\$27,000.00), against the Steamship "Arkansan", her engines, boilers, etc., and American-Hawaiian Steamship Company, a corporation; and

Whereas, American-Hawaiian Steamship Company, a corporation, owner of said vessel, has stipulated that it would file a bond and stipulation in the sum of Thirty Thousand Dollars (\$30,000.00), pursuant to the rules and practice of said court; and

Whereas, the parties to this action have now fixed the amount of the bond to be given and have agreed that the bond shall be in the sum of Thirty Thousand Dollars (\$30,000.00) and the undersigned parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of said owner, American-Hawaiian Steamship Company, a corporation, or its surety execution for the above agreed amount may issue against their goods, chattels [26] and lands,

Now, Therefore, Fireman's Fund Indemnity Company, a corporation of the State of California, having its principal office in the City of San Francisco, State of California, and authorized to do and doing business in the State of California, as surety for

American-Hawaiian Steamship Company, a corporation, claimant and owner of the Steamship "Arkansan", her engines, boilers, etc., and said American-Hawaiian Steamship Company, a corporation, as principal, are held and firmly bound unto Robert E. Clark, Marshal of the United States for the Southern District of California, his successors, heirs, executors, administrators and assigns, and The Sea Insurance Company, Ltd., a corporation, Eagle Star Insurance Company, Ltd., a corporation, and The Tokio Marine and Fire Insurance Company, Limited, a corporation, libelants in the above entitled matter, in the full and just sum of Thirty Thousand Dollars (\$30,000.00) lawful money of the United States, for which payment the said surety binds itself, its successors and assigns, firmly and by these presents; the condition of this obligation being such that, if said claimant herein, American-Hawaiian Steamship Company, a corporation, shall abide by and perform all of the orders of the court, interlocutory and final, and shall pay the amount awarded by the final decree rendered by this court, or any appellate court, if an appeal intervene, with interests and costs, then this obligation to be null and void, otherwise to remain in full force and effect.

Signed and sealed by the Surety, Fireman's Fund Indemnity Company, a corporation, by its officers thereunto duly authorized, and executed by the said claimant, American-Hawaiian Steamship Company, a corporation, as principal, by its duly authorized



agent and representative, this 22nd day of November, 1938.

AMERICAN-HAWAIIAN  
STEAMSHIP COMPANY,  
a corporation,

By FRED A. HOOPER,

District Manager. [27]

FIREMAN'S FUND

[Seal]

INDEMNITY COMPANY,  
a corporation,

By L. H. SCHWOBEDA,

Attorney in Fact.

Attest:

-----  
Examined and recommended for approval as provided in Rule 28.

HENGSTLER, DORR &  
STEVENSON

OVERTON, LYMAN & PLUMB

Proctors for Claimant,

American-Hawaiian Steamship Company, a corporation.

I hereby approve the foregoing bond.

Dated this 22nd day of November, 1938.

R. S. ZIMMERMAN,

Clerk, U. S. District Court,  
Southern District of California.

By EDMUND L. SMITH,

Deputy.

State of California,  
County of Los Angeles—ss.

On this 22nd day of November in the year one thousand nine hundred and thirty-eight before me, M. E. Beeth, a Notary Public in and for said County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared L. H. Schwobeda known to me to be the Attorney in Fact of Fireman's Fund Indemnity Company, the company described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument on behalf of the said company, and he duly acknowledged to me that such company executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office, in the said County of Los Angeles the day and year in this certificate first above written.

[Notarial Seal]                      M. E. BEETH,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires March 23, 1941.

[Endorsed]: Filed Nov. 22, 1938. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

[28]

In the United States District Court, Southern District of California, Central Division.

In Admiralty—No. 8434-C

THE SEA INSURANCE COMPANY, LTD., et al.,  
Libelants,

vs.

The Steamship "ARKANSAN", etc.  
AMERICAN-HAWAIIAN STEAMSHIP  
COMPANY,

Claimant.

#### FINAL DECREE.

The above entitled cause having been consolidated for trial with causes Nos. 8141-Y, 8143-M, and 8147-Y, and having come on to be heard on November 22 and 23, 1938, upon the issues raised by the libels of the libelants and the answer of the respondents and claimants upon a stipulation of the parties and their respective proctors approved by the Court that the Court should determine only the question of liability, and that after such determination a reference should be had for the purpose of determining the damages to be awarded; the libelant, respondent, and claimant American-Hawaiian Steamship Company, a corporation, owner of the steamship "Arkansan" and bailee of the cargo laden on board said vessel, being represented by Messrs. Hengstler, Dorr & Stevenson, Frederick W. Dorr, Esq., Messrs. Overton, Lyman & Plumb, and L. K. Vermille, Esq.; the libelant, respondent, and claimant Isthmian Steamship Company, a corporation, owner of the



steamship "Knoxville City", being represented by Messrs. McCutchen, Olney, Mannon & Green, Harold A. Black, Esq., and Walter Shelton, Esq.; the libelants Aiken Country Stores, et al., in cause No. 8143-M, owners or underwriters of cargo on board the steamship "Arkansan", being represented by Messrs. Lillick, McHose & Adams and John C. McHose, Esq.; and the libelants [29] The Sea Insurance Company, Ltd., et al., in case No. 8434-C, owners or underwriters of cargo on board the steamship "Knoxville City", being represented by Messrs. Young & Kelly, H. R. Kelly, Esq., Frank R. Johnston, Esq., and Messrs. Bigham, Englar, Jones & Houston; and evidence, oral and documentary, having been introduced and the causes having been submitted to the Court for decision and the Court having considered the evidence and the law and arguments and briefs of counsel, and due deliberation having been had and the Court having made its findings of fact and conclusions of law, and all proceedings having been duly and regularly taken, it is now in conformity with said findings and conclusions on file in cause No. 8141-Y.

Ordered, Adjudged and Decreed that the collision between the steamship "Arkansan" and the steamship "Knoxville City", which occurred a short distance inside the entrance to Los Angeles Outer Harbor on the 19th day of September, 1937, referred to in the pleadings and the findings of fact and the conclusions of law on file in cause No. 8141-Y, and the losses and damages resulting therefrom, were caused through the sole fault of the steamship "Knoxville

City” and of those in charge of her navigation, and,  
 It Is Further Ordered, Adjudged and Decreed  
 that the libelants The Sea Insurance Company, Ltd.,  
 et al., in said causes do have and recover nothing  
 from the American-Hawaiian Steamship Company,  
 a corporation, claimant of the steamship “Ar-  
 kansas”, or from the stipulators on the stipulations  
 filed in said cause for costs and for the release of  
 said vessel, and that the libel of said libelants be  
 and the same is hereby dismissed, with costs to said  
 claimant, American-Hawaiian Steamship Company,  
 a corporation.

Exception to libelants. [30]

Dated this 15th day of February, 1939.

Costs taxed at \$483.02.

LEON R. YANKWICH

United States District Judge.

Approved as to form:

McCUTCHEON, OLNEY,

MANNON & GREENE

WALTER SHELTON

Proctors for Isthmian Steam-  
 ship Company, libelant, re-  
 spondent and claimant.

Dated: February 15, 1939.

YOUNG & KELLY

BIGHAM, ENGLAR, JONES &  
 HOUSTON

Proctors for Libelants, The  
 Sea Insurance Co., Ltd.,  
 et al.

Dated: February 15, 1939.

LILLICK, McHOSE & ADAMS  
JOHN C. McHOSE

Proctors for libelants, Aiken  
Country Stores, et al.

Dated: February 15, 1939.

HENGSTLER, DORR &  
STEVENSON  
OVERTON, LYMAN & PLUMB

Proctors for American-  
Hawaiian Steamship Com-  
pany, libelant, respond-  
ent and claimant.

Dated: February 15, 1939.

Decree entered and recorded Feb. 15, 1939.

R. S. ZIMMERMAN,

Clerk.

By LOUIS J. SOMERS,

Deputy Clerk.

[Endorsed]: Filed Feb. 15, 1939. R. S. Zimmer-  
man, Clerk. By Louis J. Somers, Deputy Clerk.

[31]

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[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable Leon R. Yankwich, Judge of the  
United States District Court, Southern Dis-  
trict of California, Central Division:

Your petitioners, The Sea Insurance Company,  
Ltd., Eagle Star Insurance Company, Ltd., and The

Tokio Marine and Fire Insurance Company, Limited, Libelants herein, pray that they may be permitted to take an appeal from the final decree entered in the above cause on the 15th day of February, 1939, to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors which is filed herewith, and

Your petitioners also desire that the bond for costs on appeal filed herewith be approved by this court. [32]

Dated at Los Angeles, California, this 12th day of May, 1939.

BIGHAM, ENGLAR, JONES  
AND HOUSTON  
YOUNG AND KELLY  
E. R. YOUNG  
H. R. KELLY  
FRANK R. JOHNSTON

Proctors for Petitioners.

[Endorsed]: Filed May 12, 1939. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

[33]

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[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS.

Now come The Sea Insurance Company, Ltd., Eagle Star Insurance Company, Ltd., and The Tokio Marine and Fire Insurance Company, Limited, Li-

belants in the above entitled cause and hereby assign the following errors in the above entitled proceedings:

## I.

The District Court erred in finding that the Steamship *Arkansan* arrived off the entrance to the Outer Harbor of Los Angeles at about 5:03 A. M. on the morning of the collision and that at that time her master by a rough bearing, or otherwise, determined that the *Arkansan* was approximately one mile from the lighthouse at the end of the west breakwater and that said lighthouse bore about north by west, magnetic; the District Court further erred in finding that at about said time the said *Arkansan* changed her course to the left about  $3\frac{1}{2}$  points, or  $39^\circ$  and that after such change of course she was still headed to the [34] right of the entrance; that a later further change of about one point or  $11\frac{1}{4}^\circ$  to the left caused said *Arkansan* to head for the red buoy off the end of the east breakwater; that shortly after 5:07 A. M. said vessel headed a little more to the left or that said alleged change of course caused her to pass the red buoy slightly on her starboard side; that said vessel was then heading north, northwest, magnetic, and that said course was noted in the deck bell book by the second officer. The District Court further erred in finding that the *Arkansan* was on a course of north, northwest, magnetic, when the *Knoxville City* was sighted by her.



The District Court erred in not finding in accordance with calculations necessarily resulting from the Arkansan's own testimony that at 5:03 A. M. said Arkansan could not have been and was not substantially easterly of a point bearing south, southwest, magnetic, from said lighthouse; that a change of course to the left of only about  $2\frac{1}{2}$  points would cause said vessel to head directly for said lighthouse; that said Arkansan proceeded from 5:03 A. M. on a course of approximately  $45^{\circ}$  true; that she was on that approximate course when she sighted the Knoxville City and that her alleged position at 5:03 A. M. and all of the alleged changes of course thereafter, testified to by the Arkansan's master, are demonstrably erroneous.

## II.

The District Court erred in finding that after the Arkansan sighted the Knoxville City, she held her course and speed; that she proceeded slowly into the entrance on her own side of the channel and that the Knoxville City was passing clear of the lighthouse at the entrance at the time the Arkansan was approximately abeam of said lighthouse. The District Court further [35] erred in finding that the Arkansan was at any time prior to the collision, on her own right-hand side of the entrance and that she entered approximately at right angles to an imaginary line between the two breakwaters; that she did not interfere with the navigation of the Knoxville City and that the Knoxville City had

ample room to pass out of the harbor if she had been properly navigated.

The District Court erred in not finding in accordance with the preponderance of the evidence, and calculations necessarily resulting from unimpeachable data that said Arkansan approached the entrance to the harbor on a course of about 45° true, on her own port side of said entrance and came in to the harbor within 100 or 150 yards of the lighthouse; that she then cut sharply into said entrance on a left rudder, blocking the Knoxville City's path and further embarrassing the Knoxville City by stopping and later reversing her engine; that at all times prior to the collision said Arkansan was on the westerly side of said entrance and that the collision occurred on the westerly side of mid-channel, and that the Arkansan so crowded the Knoxville City that the latter could not safely pass out of the harbor on her own right-hand side of the channel.

### III.

The District Court erred in finding that the Knoxville City was some distance past the Blue Funnel Steamship Dolius at 5:11 A. M. when the engine of the Knoxville City was stopped and in finding that the testimony of the second officer of the Knoxville City establishes that the Knoxville City was some distance past the Dolius at 5:11 A. M.

The District Court further erred in not finding in accordance with the preponderance of the evidence that the anchor bear- [36] ing of the SS Dolius was

south 67° E. true to the breakwater light and three cables distant therefrom; that as a result of her swinging with the wind and tide, the stem of that vessel was between 200 and 400 feet southeasterly from that position at the time of the collision; that the Knoxville City was approximately abreast of the Dolius when the first one-blast whistle was heard from the Arkansan at 5:11 A. M. and the engine of the Knoxville City was stopped, and that a few moments before 5:11 A. M. the rudder of the Knoxville City was turned to the right and at 5:11 A. M. her rudder was put hard right; that her engine was set full astern at 5:11.6 A. M., but that as the Arkansan continued to swing to her left, close to the westerly side of the entrance, the master of the Knoxville City determined that the vessel could not hold her right rudder and safely go out astern of the Arkansan; that at 5:12 A. M. the Knoxville City's engine was stopped and her rudder turned to the left in an effort to avert or mitigate collision by attempting to swing the Knoxville City parallel to the Arkansan; that in order to accelerate her left swing, the Knoxville City's engine was set full ahead at 5:12.3 A. M.; that the collision occurred about one minute later, and that after the collision the Knoxville City continued to swing to her left and the Arkansan to her right until the two vessels swung nearly parallel with each other.

#### IV.

The District Court erred in finding that there was ample testimony of disinterested witnesses to cor-



roborate the testimony of the master and other officers of the *Arkansan* regarding the course and position of that vessel on her own right-hand side of the entrance; and in not finding that the preponderance of the testimony of disinterested witnesses, and the testimony of [37] those in the best position to observe, particularly that of the lighthouse keeper, Allen, corroborates the testimony of the master and other officers of the *Knoxville City* regarding the course of the *Arkansan* and her position on her own left-hand side of the entrance.

#### V.

The District Court erred in not finding that the entrance to Los Angeles Harbor constitutes a narrow channel within the meaning of Article 25 of the International Rules, and of Article 25 of the Inland Rules for the Prevention of Collisions and in not finding that the *Arkansan* did not keep to that side of the fairway or mid-channel which lay on the *Arkansan's* starboard side, but that, on the contrary, said vessel approached and actually entered said harbor on the side of mid-channel which lay to her port side; that she was at fault in so doing, and the faults of the *Arkansan* in that respect constituted a proximate cause of said collision.

#### VI.

The District Court erred in finding that at the time the two vessels sighted each other, their courses were at a broad angle of approximately 90° and in finding that “the vessels were on what is known as

crossing courses", if it is meant by said finding that said vessels were on crossing courses within the meaning of the Rules for the Prevention of Collision.

The District Court erred in not finding that the two vessels were both navigating with respect to a narrow channel, to-wit, the entrance to Los Angeles Harbor, and that the rules relating to vessels in a crossing situation were not applicable.

The District Court erred in not finding that the Arkansan, as the privileged vessel in a crossing course situation, changed [38] her course and speed in violation of her statutory duty when there was "risk of collision", and that these changes of course and speed contributed directly to bring about the collision.

## VII.

The District Court erred in not finding that the Arkansan failed to turn to her right after blowing a one-blast signal but that, on the contrary, she turned to her left and in not concluding that the Arkansan's maneuvers in those respects constituted a fault proximately causing or contributing to the collision.

The District Court erred in not finding that the sounding of a one-blast signal by the Arkansan was not only unnecessary and unjustified, but was confusing to the navigator of the Knoxville City in that under Article 28 of the International Rules, the sounding of a one-blast signal indicated a change of course by the Arkansan to starboard, which she did not in fact make.

## VIII.

The District Court erred in finding that the speed of the Knoxville City was excessive and immoderate under the circumstances then existing and that said speed contributed directly, or otherwise, to the collision and in finding that there was any appreciable contrast between the speed of the Arkansan and that of the Knoxville City and that the Knoxville City was operated at continuous full speed prior to the collision.

The District Court further erred in not finding that the speed of the Knoxville City at the time the Arkansan was sighted was not substantially more than one knot faster than the Arkansan and that the Knoxville City stopped her engine, then reversed, then stopped, and later set her engine full ahead, only because the movements of the Arkansan made it impossible for the Knoxville City to continue her reversed engine and her right rudder; and [39] that if the Arkansan had been properly navigated the collision would not have occurred.

## IX.

The District Court erred in finding that the chief officer of the Knoxville City had any duty to perform, other than that of lookout, after the Knoxville City left her anchorage, and that he was not a sufficient lookout. The District Court further erred in finding that there was any lack of a lookout on the Knoxville City and that said alleged lack was a direct or other cause of the collision and that it pre-

vented the Knoxville City from seeing the Arkansan in time to maneuver so as to avoid collision; that the alleged lack of a lookout on the Knoxville City required that all doubts regarding liability for the collision be resolved against that vessel; and that the Knoxville City failed to vindicate herself from liability by testimony conclusive to the contrary.

The District Court erred in not finding that the Arkansan did not maintain a proper or efficient lookout since the Knoxville City was not observed by those on board the Arkansan until only about 2 minutes before the collision occurred, although the weather was clear, visibility was good, and lights could be seen clearly for a distance of several miles.

#### X.

The District Court erred in finding that the Knoxville City failed to keep out of the way of the Arkansan and that the Rules required her to do so; that said alleged failure requires that all doubt regarding the liability for the collision be resolved against the Knoxville City until she should vindicate herself by testimony conclusive to the contrary and that the Knoxville City did fail to vindicate herself from liability by testimony conclusive to the contrary. [40]

The District Court further erred in not finding that the Knoxville City attempted to keep out of the way of the Arkansan and pass out of the harbor astern of the Arkansan but that the Arkansan made the collision inevitable by approaching the entrance



on the wrong side of the channel, by altering her course to the left and by failing to hold her speed, and that the improper maneuvers of the *Arkansan* forced the *Knoxville City* to abandon her attempt to go out astern of the *Arkansan* and to reverse her rudder in an effort to avert or minimize the collision.

## XI.

The District Court erred in inferentially finding that the heading of the *Knoxville City* at the time the bearing was taken on the lighthouse after the collision was, in fact,  $28^{\circ}$  true.

The District Court further erred in not finding that the heading of said vessel at the time of the collision and shortly before said bearing was taken on the lighthouse was approximately  $79^{\circ}$  true.

The District Court further erred in inferentially finding that as a result of a misinterpretation of the gyro record shortly after the collision, it was concluded erroneously that the vessel's heading at the time of the collision was  $150^{\circ}$  true and in not finding that it was erroneously concluded to be  $130^{\circ}$  true. The District Court erred in finding that the testimony of any of the witnesses of the *Knoxville City*, other than the helmsman, John Gore, was colored by the supposed heading of the vessel resulting from said misinterpretation of said gyro compass record.

The District Court further erred in not finding that the *Knoxville City's* gyro record shows that as she approached her course from her position at anchorage prior to the collision, [41] she slowly swung



to the right between  $74^\circ$  true and  $81^\circ$  true, for approximately one minute before she steadied on her heading of approximately  $81\frac{1}{2}^\circ$ ; that she remained on or near the heading last mentioned for four minutes; that she then swung to the right between  $81\frac{1}{2}^\circ$  and  $97\frac{1}{2}^\circ$  for about .7 of a minute; that she was on or near a heading of  $97\frac{1}{2}^\circ$  for .4 of a minute; that she was swinging to the left between  $97\frac{1}{2}^\circ$  and  $79^\circ$  for about 1.2 minutes; that for another minute she continued to swing to the left to a heading of about  $36^\circ$  and that she gradually swung between  $36^\circ$  and  $27\frac{1}{2}^\circ$  for about a minute and a half; that she remained on a heading of  $27\frac{1}{2}^\circ$  for about two-tenths of a minute, and that she then commenced to swing to the right.

The District Court further erred in not finding that the gyro compass record of the Knoxville City shows that the Knoxville City reached the following headings at the following times:

Time	Heading
4-48 A. M.	$345\frac{1}{2}^\circ$
49	345
50	$344\frac{1}{2}$
51	343
52	$342\frac{1}{2}$
53	344
54	$345\frac{1}{2}$
55	350
56	$\frac{1}{2}$
57	$5\frac{1}{2}$
58	8
59	$10\frac{1}{2}$

5-00	18
01	31½
02	42
03	47
04	50
05	55
06	75
07	81½
08	81½
09	80½
10	81
11	82
12	97½
13	87
14	50
15	29½
16	27½
17	46 [42]

## XII.

The District Court erred in finding that the omission from the rough log sheet of the Knoxville City of any entry regarding the bearing of the lighthouse at the time of the collision is of any significance and in finding that it is also significant that no detailed entries regarding the circumstances of the collision appear in said rough log sheet and that the absence of such entries tends to discredit the testimony of the Knoxville City's witnesses. The District Court further erred in finding that the facts of the collision were set forth in the Arkansan's rough log book and in not finding that the entries in said rough log book were largely erroneous.

## XIII.

The District Court erred in finding that the master of the Arkansan located on the chart the approximate positions of his vessel as she entered the harbor and at the time of the collision and in not finding that the alleged location on the chart was, by the master's own admission, grossly erroneous.

## XIV.

The District Court erred in not finding that the Arkansan was at fault in merely stopping her engines at 5:11½ and allowing them to remain stopped for ½ minute instead of reversing them full speed immediately at that time, since danger of collision was or should have been obvious and that the failure to reverse her engines immediately was a proximate cause of the collision.

The District Court erred in not finding that the Arkansan was at fault for not reversing her engines in time to prevent the collision, and more particularly for not reversing her engines prior to 5:11 P. M. since danger of collision had arisen prior to that time. [43]

## XV.

The District Court erred in not finding that the Arkansan should have held back in order to permit the Knoxville City to pass out beyond the ends of the breakwaters before the Arkansan tried to enter and that the Arkansan was at fault for proceeding to enter at a speed which was excessive under the existing circumstances while the Knoxville City was attempting to pass out.

XVI.

The District Court erred in not finding that the situation which was presented as the Arkansan and Knoxville City approached each other was one of special circumstances and not of crossing courses.

XVII.

The District Court rred in finding that the Knoxville City failed to sustain the burden imposed upon her to show that the faults of that vessel did not contribute to the collision; that there was any such burden imposed on the Knoxville City and that the Knoxville City was guilty of any fault which contributed to the collision. The District Court further erred in finding that the collision and the resulting damage to the Arkansan and her cargo were caused solely by the negligent navigation and faults of the Knoxville City in the particulars set forth in said findings, or otherwise.

The District Court erred in finding that there was no clear, conclusive and convincing proof of the fault of the Arkansan, or any proof whatsoever on the part of that vessel. The District Court further erred in not finding that there was clear, conclusive and convincing proof of fault on the part of the Arkansan and in not finding that the collision and the resulting damage to the Knoxville City and her cargo were caused solely [44] by the negligent navigation and faults of the Arkansan.

XVIII.

The District Court erred in concluding that Libelants, The Sea Insurance Company, Ltd., Eagle Star

Insurance Company, Ltd., and The Tokio Marine and Fire Insurance Company, Limited, in the above entitled cause are not entitled to recover any sum whatsoever from the American-Hawaiian Steamship Company, a corporation, Claimant in said cause and that said libel should be dismissed with costs to said Claimant and in not concluding that said Libelants are entitled to recover from American-Hawaiian Steamship Company, a corporation, Claimant in said cause, all losses and damages sustained by said Libelants as a result of the collision aforesaid together with interest and costs.

BIGHAM, ENGLAR, JONES  
AND HOUSTON  
YOUNG AND KELLY  
E. R. YOUNG  
H. R. KELLY  
FRANK R. JOHNSTON

Proctors for Libelants, The  
Sea Insurance Company,  
Ltd., Eagle Star Insurance  
Company, Ltd., and The  
Tokio Marine and Fire In-  
surance Company, Limited.

[Endorsed]: Filed May 12, 1939. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

[45]

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[Title of District Court and Cause.]

ORDER ALLOWING APPEAL.

The petition of The Sea Insurance Company, Ltd., Eagle Star Insurance Company, Ltd., and The Tokio



Marine and Fire Insurance Company, Limited, for an appeal from the final decree entered in the above entitled cause on the 15th day of February, 1939, is hereby granted and the appeal is allowed.

It Is Further Ordered that a certified transcript of the record herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and

It Is Further Ordered that the bond for costs on appeal is hereby fixed in the sum of Two Hundred Fifty and no/100 Dollars (\$250.00).

Dated this 12th day of May, 1939.

LEON R. YANKWICH,

United States District Judge.

[Endorsed]: Filed May 13, 1939. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

[46]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing 54 pages, numbered from 1 to 54, inclusive, contain original Citation and full, true and correct copies of Libel in Rem for Collision Damage; Answer to Libel; Order Transferring Case to Judge Yankwich; Stipulation and Order Consolidating Cases; Stipulation and Bond for Release of Vessel; Final Decree; Petition for Appeal; Assignments of Error; Order Allowing

Appeal; Bond for Costs on Appeal, which, together with the record designated in the consolidated causes numbered 9157 in the Circuit Court of Appeals and heretofore printed therein constitute the apostles on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I Do Further Certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$11.60, and that said amount has been paid me by the Appellant herein.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 16th day of June, A. D. 1939.

[Seal]

R. S. ZIMMERMAN,

Clerk.

By EDMUND L. SMITH,

Deputy Clerk.

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[Endorsed]: No. 9210. United States Circuit Court of Appeals for the Ninth Circuit. The Sea Insurance, Ltd., Eagle Star Insurance Company, Ltd., and The Tokio Marine and Fire Insurance Company, Limited, Appellants, vs. American-Steamship Company, Owner of Steamship "Arkansan", etc., Appellee. Apostles on Appeal. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed June 19, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. 9210

THE SEA INSURANCE COMPANY, LTD.,  
EAGLE STAR INSURANCE COMPANY,  
LTD., and THE TOKIO MARINE AND  
FIRE INSURANCE COMPANY, LIMITED,  
Libelants and Appellants,

vs.

THE STEAMSHIP "ARKANSAN", her engines,  
boilers, etc.,

AMERICAN-HAWAIIAN STEAMSHIP  
COMPANY,

Claimant and Appellee.

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ISTHMIAN STEAMSHIP COMPANY, a corpo-  
ration, and UNITED STATES FIDELITY  
AND GUARANTY COMPANY, a corporation,  
Appellants,

The Steamship "KNOXVILLE CITY", etc.,  
Respondent,

vs.

AMERICAN-HAWAIIAN STEAMSHIP  
COMPANY, a corporation,

Appellee.

ISTHMIAN STEAMSHIP COMPANY, a corporation,  
 and UNITED STATES FIDELITY  
 AND GUARANTY COMPANY, a corporation,  
 Appellants,

The Steamship "KNOXVILLE CITY", etc.,  
 Respondent,

vs.

AIKEN COUNTRY STORES, et al.,  
 Appellees.

ISTHMIAN STEAMSHIP COMPANY, a corporation,  
 Libelant and Appellant,

vs.

The Steamship "ARKANSAN", etc.,  
 Respondent,

AMERICAN-HAWAIIAN STEAMSHIP  
 COMPANY, a corporation,  
 Claimant and Appellee.

STATEMENT OF THE POINTS UPON WHICH  
 APPELLANTS INTEND TO RELY ON  
 THE APPEAL.

Now come The Sea Insurance Company, Ltd.,  
 Eagle Star Insurance Company, Ltd., and The

Tokio Marine and Fire Insurance Company, Limited, appellants herein and make the following statement in conformity with Subdivision 6 of Rule 19 of the rules of this court.

This appeal is from a final decree of the United States District Court for the Southern District of California, made and entered in the cause entitled The Sea Insurance Company, Ltd., Eagle Star Insurance Company, Ltd., and The Tokio Marine and Fire Insurance Company, Limited, Libelants and Appellants vs. The Steamship "Arkansan", her engines, boilers, etc., American-Hawaiian Steamship Company, Claimant and Appellee, arising out of a collision between the Steamship "Knoxville City" and the Steamship "Arkansan" near the entrance to Los Angeles Harbor on September 19, 1937.

Said decree was made pursuant to a holding that the "Knoxville City" was solely at fault for said collision. This appeal calls for a trial de novo and it is appellants' contention that the District Court erred in the respects set out in the assignment of errors filed in said proceeding. Appellants contend that the "Arkansan" should be held at fault for said collision and that the said decree should be reversed or modified. Without waiving any of the errors heretofore assigned, appellants state that the points chiefly involved in this appeal are as follows:

(1) That the District Court erred in not finding that the "Arkansan" failed to maintain a competent and efficient lookout.



(2) If the situation as the "Arkansan" and "Knoxville City" approached each other was one of crossing courses, as found by the District Court, then the District Court erred in not finding that the "Arkansan" failed to hold her course and speed.

(3) That the District Court erred in not finding that the "Arkansan" was at fault for sounding a one blast signal and for not directing her course to starboard after sounding such a signal.

(4) That the District Court erred in not finding that the "Arkansan" should have held back and not attempted to enter between the ends of the two breakwaters until after the "Knoxville City" had passed out.

(5) That the District Court erred in not finding that the situation which was presented as the "Arkansan" and "Knoxville City" approached each other was one of "Special Circumstances" and not one of "Crossing Courses".

(6) That the District Court erred in not finding that the "Arkansan" failed to reverse her engines in adequate time to avoid collision.

These issues require a consideration of the pleadings and all the evidence in the case, oral and documentary.

A stipulation has been entered into designating

the parts of the record necessary for the consideration of the points involved in this appeal.

BIGHAM, ENGLAR, JONES &  
HOUSTON

YOUNG & KELLY

E. R. YOUNG

H. R. KELLY

FRANK R. JOHNSTON

Proctors for Libellants and Appellants, The Sea Insurance Company, Ltd., Eagle Star Insurance Company, Ltd., and The Tokio Marine and Fire Insurance Company, Limited.

[Endorsed]: Filed Jun. 19, 1939.



[Title of Circuit Court of Appeals and Cause.]

STIPULATION DESIGNATING PARTS OF  
RECORD TO BE PRINTED.

Whereas, The Sea Insurance Company, Ltd., Eagle Star Insurance Company, Ltd., and The Tokio Marine and Fire Insurance Company, Limited, libelants in cause No. 8434-Y in the United States District Court for the Southern District of California, have appealed from the final decree heretofore entered in said proceedings on the 15th day of February, 1939, by virtue of an order duly made by said court on the 12th day of May, 1939, allowing said appeal, and

Whereas, Isthmian Steamship Company, respondent and claimant in cause No. 8141-Y in the United States District Court for the Southern District of California, and United States Fidelity and Guaranty Company, its stipulator for value, have appealed from the interlocutory decree heretofore entered in said proceedings on the 15th day of February, 1939, by virtue of an order duly made by said court on the 28th day of February, 1939, allowing said appeal, and

Whereas, Isthmian Steamship Company, respondent and claimant in cause No. 8143-Y in the United States District Court for the Southern District of California, and United States Fidelity and Guaranty Company, its stipulator for value, have appealed from the interlocutory decree heretofore entered in said proceedings on the 15th day of February, 1939, by virtue of an order duly made by said court on the 28th day of February, 1939, allowing said appeal, and

Whereas, Isthmian Steamship Company, libelant in cause No. 8147-Y in the United States District Court for the Southern District of California has appealed from the final decree heretofore entered in said proceedings on the 15th day of February, 1939, by virtue of an order duly made by said court on February 28, 1939, allowing said appeal, and

Whereas, all of said causes have been duly consolidated upon appeal, and

Whereas, apostles on appeal have been printed in the causes Nos. 8141-Y, 8143-Y and 8147-Y. (No. 9157 in the records and files of this court), and

Whereas, it has been stipulated and agreed that the appeal from the decree entered in cause No. 8434-Y may be heard and determined upon said apostles on appeal which have heretofore been printed in No. 9157 and upon the exhibits which were introduced into evidence at the consolidated trial of causes Nos. 8141-Y, 8143-Y, 8147-Y and 8434-Y heretofore filed with the clerk of the United States Circuit Court of Appeals in No. 9157, and upon apostles on appeal to be printed containing certain additional matter.

Now, Therefore, It Is Hereby Stipulated and Agreed that the record on appeal herein shall consist of said apostles on appeal heretofore printed in No. 9157 and said above mentioned exhibits and apostles on appeal to be printed containing the following matter:

Pages of Original  
Certified Record

1. Libel in cause No. 8434-Y.....	5
2. Answer to libel in cause No. 8434-Y.....	12
3. Stipulation and bond in cause No. 8434-Y .....	26
4. Stipulation and order dated Novem- ber 19, 1938, consolidating causes Nos. 8141-Y, 8143-Y, 8147-Y and and 8434-Y for trial.....	21
5. Final decree in cause No. 8434-Y.....	29
6. Petition for appeal in cause No. 8434-Y .....	32
7. Order allowing appeal in cause No. 8434-Y .....	46



8. Assignment of errors in cause No. 8434-Y ..... 34
9. Stipulation fixing date for filing briefs and order consolidating appeals...(Filed in Circuit Court of Appeals)
10. Appellants statement of points upon which they intend to rely on appeal.....(Filed in Circuit Court of Appeals)
11. This stipulation .....  
.....(Filed in Circuit Court of Appeals)

It Is Further Stipulated that in making up the printed record, the Clerk of the Ninth Circuit shall omit all formal captions and titles except the caption upon the libel, substituting therefor the words "Title of Court and Cause"; and that all verifications may be omitted, substituting therefor the word "Verified".

BIGHAM, ENGLAR, JONES &  
HOUSTON  
YOUNG & KELLY  
E. R. YOUNG  
H. R. KELLY  
FRANK R. JOHNSTON

Proctors for appellants, The  
Sea Insurance Company,  
Ltd., Eagle Star Insur-  
ance Company, Ltd., and  
The Tokio Marine and  
Fire Insurance Company,  
Limited.



FARNHAM P. GRIFFITHS  
HAROLD A. BLOCK  
McCUTCHEN OLNEY  
MANNON & GREENE  
WALTER SHELTON

Proctors for appellants, Isthmian Steamship Company and United States Fidelity and Guaranty Company.

FREDERICK W. DORR  
ARCHIE M. STEVENSON  
DORR & STEVENSON

Proctors for appellee, American-Hawaiian Steamship Company.

LILLICK, McHOSE & ADAMS  
JOHN C. McHOSE

Proctors for appellees Aiken Country Stores, et al.

It Is Hereby Ordered that the foregoing stipulation be and it is hereby approved.

CURTIS D. WILBUR  
Judge of the United States Circuit Court  
of Appeals for the Ninth Circuit.

[Endorsed]: Filed Jun. 20, 1939.

